Again this Rule 92 is one made under Section 77 (1) (z) of the Enactment which gives power to make Rules "generally to give effect to the provisions of this Enactment."

What then is the provision of the Enactment to give effect to which this Rule has been made?

It is, I think, abundantly clear that what is aimed at in the prohibition of *possession* of toddy to which water has been added is the protection of the rights of the purchaser—the persons who come and buy such toddy at the Toddy-shop and that therefore this Rule is in aid of and to give effect to the provisions of Section 74 (ii) i.e.

> "No person shall sell to the prejudice of the purchaser any intoxicating liquor which is not of the nature and quality demanded by such purchaser;"

The purchaser at the Toddy-shop asks for toddy, not for toddy to which water has been added.

In Section 2 of the Enactment "toddy" is defined as "the juice of the coconut". When a purchaser buys toddy he expects to receive a liquor which is the juice of the coconut and that only; and he is defrauded if he is supplied with juice to which water has been added.

Now this case seems to be exactly covered by the case of *Parker v. Alder*[2].

That was a case where a milk salesman contracted to supply pure milk to an Association to be delivered at a Railway Terminus in London. He delivered the milk pure and unadulterated to the Railway at a local station for transport to London. It was adulterated without his knowledge during transit. A sample was found to contain 9% of added water.

He was held liable irrespective of any *"mens rea."*

The prosecution was under Section 6 of the Sale of Food and Drugs Act 1878 which reads:—

> "No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser."

I arrive, therefore, both from a consideration of the authorities and from application of the general principle at the conclusion that the prohibition in Rule 92 is an absolute one—and an offence is committed even though the Licensee or Salesman has no knowledge that the toddy contains added water.

The milk contractor was held liable for the adulteration done after the milk had passed from his possession and from his control; the toddy licensee or salesman is in the same way liable for adulteration done before the toddy comes into his possession and under his control.

I might point out that Section 67 speaks of "Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Enactment or of any rule . . . ."

The language is not very appropriate when applied to "possession." It is hardly omission or neglect but can I think be considered as an "act done."

Conviction upheld but the fine reduced from $250/- to $5/- as there was no evidence to show that the appellant was a party to the adding of water to the toddy or had any knowledge of the fact.

Conviction upheld. Sentence reduced.

[SPECIAL JURISDICTION]

MURRAY-AYNSLEY, J.

February 5, 1940.

THE COLLECTOR OF LAND REVENUE, KUALA KANGSAR

(Applicant*)

v.

LOW KEE & OTHERS

(Respondents).

[PERAK CIVIL APPLICATION No. 19 of 1939]

Land Acquisition Enactment (Cap. 140)—Acquisition of land held on non-mining title—value of minerals.

When acquisition proceedings are taken in respect of land held on a non-mining title the presence of minerals in the land is no ground for increasing the collector's award.

Case referred to:—

(1) *Sri Raja v. Revenue Officer,* (1939) 2 A.E.R. 317.

REFERENCE by the Collector of Land Revenue, Kuala Kangsar under section 22 of the Land Acquisition Enactment (Cap. 140). The collector's award was $600/- (to be paid to the chargee) plus $50/- for moving a hut. Evidence was given on behalf of the respondents of mineral values obtained by boring the land and of the probable value of the tin content and on behalf of the collector, of recent transfers at the price now offered by the collector's award.

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*[The Collector was the applicant in these proceedings though section 22 et seqq. of the Enactment refer to the persons interested in the land as "the applicant."—Ed. M.L.J.]

S. Seenivasagam for respondents: My objection to the award is that the potentialities of the land have not been taken into account. (Refers *Sri Raja v. Revenue Officer*[1] and other authorities therein cited). The English decisions apply to the interpretation of the Indian Act (*ib* pp. 320, 321) consequently to the Federated Malay States Land Acquisition Enactment. "Market Value" has been held to include potentialities and the value of the minerals constitutes one of the potentialities which the collector has failed to take into account.

M. C. Hay, Deputy Legal Adviser for Applicant: The difficulty of applying English and Indian decisions is that there you have to value a fee simple, here we are dealing with something very much less than a fee simple. The land in question was alienated under the Land Enactment 1911 which gives the alienee "surface rights only" (section 11 of the Land Enactment 1911). The Land Code has made the position plainer by laying down (section 26) that "no land alienated under the provisions of this or any previous Land Enactment shall be mined as long as such alienation . . . . continues in force." The implied condition forbidding mining is "a condition restricting the use to which the land may be put" and such a condition must be taken into account in determining the amount of compensation (Section 29 (ii) (c) of the Land Acquisition Enactment). The boring results are entirely irrelevant.

Murray-Aynsley, J.—In this case the land sought to be acquired contains minerals of considerable value. But the minerals do not belong to the holder of the land. In view of the law governing the matter, contained in the Land Code and the Mining Code, I do not think that the holder of land on a non-mining title can derive any benefit from the presence of minerals. Unless he can secure a mining title they are of no use to him at all. I quite accept Major Hannay's evidence as to the minerals present, and the value they might have for someone with a mining title. Apart from Major Hannay's evidence, no evidence of value was given. In the circumstances I assess the value on an agricultural basis.

Under Section 29 (a) I award $600/-.
Deduction under sub-section
(b) Nil
Amount awarded under Sub-sec.
(c) Nil
(d) Nil
(e) $50/- for change of residence of Low Kee.
Applicant to have costs.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) & TERRELL, J.A. (MALAYA)

March 6, 1940.

PUBLIC PROSECUTOR v. S. MANICKAM.

[SELANGOR CRIMINAL APPEAL No. 42 of 1939]

Excise Enactment (Cap. 133) Ss. 13 (i), 67—possession of utensils which when assembled can constitute a still—whether an offence.

In order to support a charge under Section 13 (i) of the Excise Enactment for knowingly keeping a still for distilling intoxicating liquor it is not necessary to prove possession of a complete still. Evidence of possession of dismantled components of a still and of their past use for distilling purposes is sufficient to sustain a conviction under the section.

Lim Chu Pian v. Public Prosecutor,[1] over-ruled.

Case referred to:—

(1) *Lim Chu Pian v. Public Prosecutor,* 1 M.C. 158.

CRIMINAL APPEAL.

T. D. Wallace, Deputy Public Prosecutor, for Public Prosecutor.

Respondent in person.

Poyser, C.J.—This is an appeal by the Public Prosecutor against an acquittal. At the conclusion of Mr. Wallace's (Deputy Public Prosecutor) argument we allowed the appeal, but intimated that our reasons for so doing would be embodied in a written judgment.

The respondent was charged before the Magistrate, Kajang, on the 20th of November 1939, with the following offence:—

> "That you on 16.11.39 at about 3 p.m. at the 24th mile, Sungei Rinching, Semenyih, did knowingly have in your possession a still for the distillation of intoxicating liquor without being licensed in that behalf, an offence under section 13 (i) and punishable under section 67 of Cap. 133."

The evidence for the prosecution, which appears to have been accepted by the Magistrate in its entirety, established that the respondent had in possession a number of utensils which, assembled together, would form a complete still, and there was evidence that such utensils had been used for the distillation of intoxicating liquor.

The Magistrate acquitted the respondent, holding that he was bound by the case of *Lim Chu Pian v. P.P.,*[1]. The facts in that case were very similar to this. A number of articles were found in the accused's